

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2007/006318

International filing date (day/month/year)
14.03.2007

Priority date (day/month/year)
15.03.2006

International Patent Classification (IPC) or both national classification and IPC
INV. B29C49/08 B65D79/00 B65D1/02

Applicant
GRAHAM PACKAGING COMPANY, L.P.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tlx: 523656 epmu d
Fax: +49 89 2399 - 4465

Date of completion of
this opinion

see form
PCT/ISA/210

Authorized Officer

Ingelgård, Tomas

Telephone No. +49 89 2399-7248



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2007/006318

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of:
 - ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ on paper
 - ☐ in electronic form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in electronic form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2007/006318

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	<u>1-23</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-23</u>
Industrial applicability (IA)	Yes: Claims	<u>1-23</u>
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

5.1 Reference is made to the following documents:

- D1: WO 2004/028910 A (CO2 PAC LTD [NZ]; MELROSE DAVID MURRAY [NZ]) 8 April 2004 (2004-04-08)
D2: EP-A1-1 063 076 (A K TECH LAB INC [JP]) 27 December 2000 (2000-12-27)
D3: US-A-4 134 510 (CHANG LONG F) 16 January 1979 (1979-01-16)

5.2 Novelty

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 6 and 16 is not new in the sense of Article 33(2) PCT.

5.2.1 The document D1 discloses (the references in parentheses applying to this document):

A method comprising:

- blowmolding a container (figures 1-18), a base of the container having a first hinge (6, 8), a first wall (13, 30) coupled to said first hinge, a second hinge (30 .. 31) coupled to said first wall, and a second wall (31) coupled to said second hinge, both of said first wall and said second wall being formed extending away (figure 12) from an interior of said container relative to a longitudinal axis of said container (figure 11C);
- inverting said first wall about said first hinge toward the interior of said container relative to the longitudinal axis (figures 11D, 14); and
- inverting said second wall about said second hinge toward the interior of said container relative to the longitudinal axis (figures 12A-12C), wherein rigidity of said base prevents substantial* net distortion of said base during inversion of said second wall.

5.2.2 The document D2 discloses (the references in parentheses applying to this document):

A method comprising:

- blowmolding a container (figures 4, 5, 10-13; paragraphs 1, 2, 6, 7), a base of the container (53, 52, 54) having a first hinge (53), a first wall (53 .. 54) coupled to said first

hinge, a second hinge (54) coupled to said first wall, and a second wall (52 .. 54) coupled to said second hinge, both of said first wall and said second wall being formed extending away (figure 12) from an interior of said container relative to a longitudinal axis of said container;

- Inverting said first wall about said first hinge toward the interior of said container relative to the longitudinal axis (figure 13, paragraphs 9, 12); and
- Inverting said second wall about said second hinge toward the interior of said container relative to the longitudinal axis (figures 4, 5; paragraphs 29, 30), wherein rigidity of said base prevents substantial* net distortion of said base during inversion of said second wall.

* The wording "rigidity of the base prevents substantial net distortion" is vague and is interpreted in the following way by the division: The deformation shown in D3, figures 4, 7 is an example of substantial net distortion as the base shown here is still in molten state and the result is a rolling inversion comprising substantial net distortion. The deformations shown in D1 and D2 are made when the container is in a rigid state, and therefore more of a sudden "snap" comprising less net distortion.

5.3 The same reasoning applies, *mutatis mutandis*, to the subject-matter of the corresponding independent claims 6 and 16, which therefore are also considered not new.

5.4 The dependent claims do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty, see documents D1 and D2 and the corresponding passages cited in the search report.

5.5 It is not at present apparent which part of the application could serve as a basis for a new, allowable claim. Should the applicant nevertheless regard some particular matter as patentable, an independent claim in the two-part form should be filed. The applicant should also indicate the difference of the subject-matter of the new claim vis-à-vis the state of the art and the significance thereof.

If filing amended claims the applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of

the introductory portion and any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed. In order to facilitate the examination of the conformity of the amended application, the applicant should clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based. If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.

Re Item VII

7.1 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 and D2 is not mentioned in the description, nor are these documents identified therein.

7.2 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

Re Item VIII

The features of product claims 12-14 comprise method features. The intended limitations are therefore not clear from this claim, contrary to the requirements of Article 6 PCT.